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Hon. Frederic Block USDJ
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Windward Bora, LLC v Shami, et al. 20 CV 3668 (FB)(RER)

Dear Sir/Madam:

Lawrence Katz, the attorney for Rachel Weiss and former attorney for the defendant Ezra and Rachel Shami would move to dismiss the complaint against Rachel Weiss for failure to join an essential party, a jurisdictional defect.

Plaintiff presently is suing only Rachel Weiss who was not a party to the alleged underlying indebtedness or the original mortgage. There are presently no other parties to this action. In New York one may not separate the mortgage from the indebtedness and one therefore always sues under the indebtedness. While the former defendants were alleged to have been on the indebtedness, Rachel Weiss is not. In New York the individual responsible for the debt is an essential party. While the court dismissed both of these deceased defendants from the complaint, nothing within the complaint has been amended.

In the alternative, Rachel Weiss would ask that the case be dismissed for failure to substitute a party within 90 days after service of a statement noting the death of a party.

The court should be advised that Rachel Weiss was under the impression that the parties had settled this matter and were surprised that the Plaintiff was moving for default. It was never the intention of Rachel Weiss to default.

Lawrence Katz

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